

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

Apr 17 3 48 PM '96

DISPATCHED BY

FCC 96-169

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 203 of	)	MM Docket No. 96-90
The Telecommunications Act of 1996	)	
(Broadcast License Terms)	)	
	)	
47 CFR Sections 73.1020 and 74.15	)	

**NOTICE OF PROPOSED RULE MAKING**

Adopted: April 11, 1996

Released: April 12, 1996

Comment Date: May 20, 1996

Reply Comment Date: June 4, 1996

By the Commission:

**I. INTRODUCTION**

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("Telecom Act").<sup>1</sup> Section 203 of the Telecom Act modifies the previous statutory provisions regarding license terms for broadcast stations in two principal ways.<sup>2</sup> First, it eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations. Second, Section 203 provides that such licenses may be for terms "not to exceed 8 years," thus increasing the previous statutory maximum terms of 5 years for television stations and 7 years for radio stations. We issue this Notice of Proposed Rule Making ("NPRM") to implement these new statutory provisions regarding broadcast license terms. Specifically, we seek comment on our proposal to extend broadcast license terms to 8 years.

---

<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>2</sup> The statutory provisions governing the license terms for broadcast stations are contained in Section 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(c).

## **II. BACKGROUND**

2. Section 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(c), authorizes the Commission to establish the period or periods for which licenses shall be granted or renewed. Prior to the enactment of the Telecom Act, Section 307(c) provided that the licenses of television stations, including low power TV stations, could be issued for a term of no longer than 5 years. It further provided that license terms for radio stations, including auxiliary facilities, could be for a period not to exceed 7 years. These were the maximum allowable license terms and the Commission had the discretion to grant or renew a broadcast license for a shorter period if the public interest, convenience, and necessity would be served by such action. Consistent with these statutory provisions, Section 73.1020 of the Commission's Rules currently states that "[r]adio broadcasting stations will ordinarily be renewed for 7 years and TV broadcast stations will be renewed for 5 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term." Section 73.1020 also sets forth a renewal schedule for broadcast stations based on the geographical region of the country in which each station is located.<sup>3</sup>

3. Section 203 of the Telecom Act amends Section 307(c) of the Communications Act to read as follows:

Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted

---

<sup>3</sup> Section 74.15 of the Commission's Rules, 47 C.F.R. §74.15, sets forth the license terms and renewal cycles for other classes of broadcast facilities. Licenses for experimental broadcast stations are issued for 1-year terms under Section 74.15(a). Under Section 74.15(b), licenses for auxiliary broadcast stations or systems are issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses for FM and TV booster stations are issued for a period running concurrently with the license of the primary stations with which they are used pursuant to Section 74.15(c). Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in the renewal cycle portion of Section 74.15(d) depending on the geographic area in which the stations are located. Low power TV and TV translator stations will ordinarily be renewed for 5 years, and FM translator stations will ordinarily be renewed for 7 years. Section 73.733 of the Commission's Rules, 47 C.F.R. §73.733, sets forth the license terms for international broadcasting stations, which are normally issued for a term of 7 years.

and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

### III. DISCUSSION

4. Section 203 of the Telecom Act raises three general issues that need to be resolved before we can implement this new statutory provision in our rules: (1) Given the discretion reserved to the Commission for granting and renewing broadcast licenses for a term not to exceed 8 years, should the Commission ordinarily grant such licenses for terms up to the new statutory maximum? (2) Should the Commission exercise its statutory discretion to distinguish by rule among different classes of stations in determining appropriate license terms? (3) How should we incorporate any potential changes in the length of license terms into the framework set forth in our Rules regarding license renewal cycles? We seek comments on each of these issues as more fully discussed below.

5. **Length of License Terms.** Although the language of Section 203 of the Telecom Act lengthens the maximum permissible broadcast license term to 8 years for both television and radio stations, the statute does not *require* the Commission to extend license terms to 8 years as a matter of course. The statutory language provides that licenses are to have terms "not to exceed 8 years" and expressly states that the Commission "may" grant renewals for terms not to exceed 8 years if the public interest would be served thereby. Moreover, the language indicates that the Commission may, by rule, adopt different license terms for different classes of stations. Given this discretion under the statute regarding how we might amend our rules, we believe it is appropriate to determine through notice and comment rulemaking the proper length of broadcast license terms as a general matter.

6. For several reasons, we propose to amend our Rules to provide that broadcast licenses ordinarily have the maximum 8-year term authorized under the statute. First, the practice of ordinarily granting television and radio licenses for the maximum terms will reduce the burden to broadcasters of seeking the periodic renewal of their licenses and the associated burdens on the Commission. Second, it is consistent with past Commission practice; our current rules provide for the maximum license terms in accordance with previous statutory maximum terms of 5 years for television stations and 7 years for radio stations.<sup>4</sup> Finally, this approach is consistent with the legislative history of the Telecom Act. While the statutory language provides the Commission discretion in this area, the Conference

---

<sup>4</sup> The 5 and 7 year terms for new licenses and license renewals were enacted into law pursuant to the Omnibus Budget Reconciliation Act of 1981. Pub. L. 97-35, 95 Stat. 357. That legislation amended Section 307 of the Communications Act, extending the maximum 3-year license term previously prescribed for both radio and television stations.

Report indicates that Congress intended the Commission to adopt the maximum term, stating that Section 203 of the Telecom Act "extends the license term for broadcast licenses to eight years for both television and radio."<sup>5</sup>

7. We seek comment on this proposal to amend Sections 73.1020 and 74.15 of our Rules to provide that the Commission will ordinarily grant licenses for the 8-year terms allowed by Section 203 of the Telecom Act. Irrespective of what the Commission ultimately determines to be an appropriate standard license term, we note that Section 203 of the Telecom Act explicitly reserves the Commission's authority to grant individual licenses for less than the statutory maximum if the public interest, convenience, and necessity would be served by such action.

8. **Classes of Stations.** Section 203 of the Telecom Act states in part: "the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations...." While this provision provides us authority to designate different license terms for particular classes of stations (provided that they do not exceed 8 years), we propose to treat all but experimental broadcast stations uniformly.

9. With respect to television and radio stations the statute eliminates the current distinction between these services for purposes of establishing the maximum allowable license terms. In this regard, the legislative history states: "By applying a uniform license term ... for all broadcast station licenses, the Committee simply recognizes that there is no reason for longer radio license terms than for television licenses. The Committee intends that applying a uniform license term ... for radio and television licenses will enable the Commission to operate more efficiently in the awarding of new or renewed licenses for all broadcast licenses." H.R. Rep. No. 104-204, Section 304, 104th Cong., 1st Sess. 122 (1995).

10. Similarly, we propose to track the approach we take with full-service stations and adopt an 8-year license term for FM and TV translator facilities and low power TV stations, as well as for international broadcasting stations. This approach is consistent with our previous decision to treat these different classes of stations uniformly. *See Report and Order* in MM Docket No. 92-168, 9 FCC Rcd 6504 (1994). We further propose to continue our practice, set forth in Sections 74.15(b) and (c) of our Rules, of tying the license terms for auxiliary and booster facilities to the license terms of the broadcast stations with which they are associated. We seek comment on these proposals.

11. Finally, we propose to continue our practice, set forth in Section 74.15(a) of our Rules, of issuing licenses for experimental broadcast stations for a term of 1 year. We believe that a longer license term would not be warranted for this class of station and seek

---

<sup>5</sup> S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 164 (1996).

comment on this proposal.

12. **Implementation of Amended License Term Provisions.** Section 203 of the Telecom Act and the legislative history are silent as to whether existing broadcast station licenses may be modified immediately to conform to any new license terms that may be adopted.

13. The implementation issue is important because of the logistics involved in renewing broadcast licenses. Under Sections 73.1020 and 74.15 of the Commission's Rules, all of the licenses for a particular class of broadcast stations expire at fixed intervals over a 3-year period. To stagger the processing of renewal applications and thus perform this task more efficiently, the country is divided into 18 different regions containing 1 or more states for purposes of establishing synchronized schedules for radio and television license renewals. The radio renewal schedule and the television renewal schedule operate on separate and distinct cycles that do not run concurrently. Accordingly, once all radio licenses have been renewed as scheduled, there is a 50-month hiatus before the radio renewal cycle begins again. Similarly, once all television licenses have been renewed as scheduled, there is also a 26-month hiatus before the television renewal cycle begins again.

14. Because of the cyclical nature of this process, any change in the length of the license term implemented in the middle of a renewal cycle could adversely affect the synchronization of the whole process. In 1981, when Congress last amended the length of broadcast license terms, two factors prevented any such synchronization problems. First, under the statute in effect at that time, both radio and television licenses had 3-year maximum terms and the renewal cycles for radio and television ran concurrently. Furthermore, the renewal cycles for both radio and television had not yet begun when the rules implementing the amended statute took effect. Accordingly, pursuant to the explicit Congressional mandate contained in the amended statute, Pub. L. No. 97-35, 95 Stat. 357, 736 (1981), the Commission applied the longer license terms prospectively as stations came up for renewal following the legislation's enactment. *See Order, Amendment of Section 73.1020 of the Commission's Rules*, 88 F.C.C. 2d 355, 356 (1981).

15. There is, however, a significant difference between the renewal situation in 1981 and the current situation. By the time the Telecom Act of 1996 was enacted in February 1996, the renewal cycle had already begun for radio stations in several regions of the country. Specifically, the licenses for radio stations in Maryland, the District of Columbia, Virginia, West Virginia, North Carolina, and South Carolina have either already been renewed under the previous license term guidelines, or are still pending. Similarly, renewal applications for radio stations in Florida, Puerto Rico, the Virgin Islands, Alabama, Georgia, Arkansas, Louisiana, and Mississippi were already on file with the Commission at the time the 1996 Act was enacted, and may be ripe for grant before the conclusion of this proceeding. The practical effect of this situation is that radio licenses that have already been renewed for the current maximum allowable 7-year term will have shorter terms than radio licenses renewed later in the renewal cycle, if we adopt the 8-year term we now propose.

When these previously granted licenses expire the radio renewal process will no longer be synchronized.<sup>6</sup>

16. We wish to maintain the efficiencies inherent in the existing synchronized schedule of renewal cycles. Should we ultimately adopt an 8-year license term, we therefore propose to implement it as follows. For broadcast renewal applications that are granted *after* the effective date of a decision in this proceeding, we propose to ordinarily grant the renewed license for the maximum proposed term of 8 years.<sup>7</sup> For renewal applications that have been filed as part of the current renewal cycle (*i.e.*, the cycle beginning October 1, 1995 for radio stations) and that have been granted only the maximum 7-year license term provided under our current rules because they were processed *prior* to a decision in this proceeding, we propose to extend by rule the already renewed 7-year license term for such stations to the proposed 8-year term. These licenses will thus be modified by rule to have the new maximum term and will come up for renewal in synchronization with future radio renewal cycles.<sup>8</sup> The Commission adopted a similar approach in 1983 when it extended existing common carrier and satellite licenses from 5 to 10 years.<sup>9</sup> As noted in that decision, the Commission's authority to modify the provisions of existing licenses by rulemaking has been upheld on several occasions.<sup>10</sup> This type of approach is also consistent with the discretion we are given by the Telecom Act to prescribe rules governing the period

---

<sup>6</sup> Unlike the radio renewal cycle which has already begun with licenses that expired on October 1, 1995, the television renewal cycle is not scheduled to commence until the first group of television licenses expires on October 1, 1996. We expect to complete this proceeding prior to the commencement of the television renewal cycle.

<sup>7</sup> We will, as required by the Telecom Act, reserve the right to grant renewals in particular cases for less than the maximum term if the public interest would be served by such action.

<sup>8</sup> We currently do not anticipate a need to take this approach with respect to the television renewal cycle, which has not yet begun. *See supra* note 6.

<sup>9</sup> *See Report and Order* in CC Docket No. 83-371, 53 R.R.2d 1514 (1983). Unlike the situation in 1983 and here, in 1981, we extended license terms in response to a statutory change without notice and comment. *See Amendment to Section 73.1020 of the Commission's Rules: Station License Period*, 88 FCC 2d 355 (1981). We believe the approach followed here and in 1983 is the appropriate one under the Communications Act and the Administrative Procedure Act. *See* 5 U.S.C. § 553.

<sup>10</sup> *See, e.g., Committee For Effective Cellular Rules v. FCC*, 53 F.3d 1309 (D.C. Cir. 1995); *WBEN, Inc., v. FCC*, 396 F.2d 601 (2d Cir.), *cert. denied*, 393 U.S. 914 (1968); *see also National Broadcasting Co. v. United States*, 319 U.S. 190 (1943); *California Citizens Band Association v. United States*, 375 F.2d 43 (9th Cir. 1967), *cert. denied*, 389 U.S. 844 (1967).

or periods for which licenses are granted for particular classes of stations. We solicit comment on this proposed approach for implementing the new maximum broadcast license terms authorized by the Telecom Act.

#### IV. CONCLUSION

17. By this *Notice of Proposed Rule Making*, we request comments on how to best implement the provisions of Section 203 of the Telecom Act. Specifically, we seek comment on whether we should amend Sections 73.1020, 73.733, and 74.15 of the Commission's Rules to provide that broadcast licenses ordinarily should have 8-year terms, the maximum provided under the Telecom Act. We also seek comment on the treatment of different classes of broadcast stations and how best to implement the transition to any amended license term in an equitable manner given that the renewal cycle has already begun.

#### V. ADMINISTRATIVE MATTERS

18. Filing of Comments. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before May 20, 1996, and reply comments on or before June 4, 1996. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. Two of these six copies should be captioned "Extra Public Copies." If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

19. Initial Paperwork Reduction Act of 1995 Analysis. This NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

20. Written comments by the public on the proposed and/or modified information

collections are due on or before May 20, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

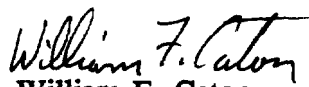
21. Ex Parte Rules. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

22. Initial Regulatory Flexibility Analysis. See Appendix A.

23. Authority. This NPRM is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307.

24. Additional Information. For additional information on this proceeding, contact Robert Somers (202) 418-2130, Mass Media Bureau.

## FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary



## **APPENDIX A**

### **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

I. Reason for the Action: This proceeding was initiated to review and update the Commission's Rules concerning the license terms of broadcast stations pursuant to Section 203 of the Telecom Act.

II. Objective of this Action: This NPRM is intended to reexamine the Commission's rules concerning the license terms of broadcast stations in light of the statutory revisions contained in Section 203 of the Telecom Act.

III. Legal Basis: Authority for the actions proposed in this NPRM may be found in Sections 4, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 307.

IV. Recording, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule: None

V. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: None.

VI. Description, Potential Impact, and Number of Small Entities Involved: Approximately 22,817 existing broadcasters of all sizes and services may be affected by the proposals contained in this decision.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The proposals contained in this NPRM are intended to simplify and ease the regulatory burden currently placed on broadcasters.

VIII. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the above Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM but they must have a separate and distinct heading designating them as responses to IRFA. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).